

110TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

*J Webb*

To provide for the study and investigation of wartime contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. WEBB (for himself, Mrs. McCASKILL, Ms. KLOBUCHAR, Mr. BROWN, Mr. CASEY, Mr. TESTER, Mr. CARDIN, Mr. WHITEHOUSE, Mr. SANDERS, Mr. DURBIN, Mr. LEVIN, Mr. CARPER, Mrs. FEINSTEIN, Mr. KERRY, Mr. JOHNSON, Mrs. BOXER, and Mr. OBAMA) introduced the following bill; which was read twice and referred to the Committee on

*and  
Mr. LEAHY  
Mr. HARKIN*

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**A BILL**

To provide for the study and investigation of wartime contracts and contracting processes in Operation Iraqi Freedom and Operation Enduring Freedom, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Commission on War-  
5 time Contracting Establishment Act".

1 **SEC. 2. STUDY AND INVESTIGATION OF WARTIME CON-**  
2 **TRACTS AND CONTRACTING PROCESSES IN**  
3 **OPERATION IRAQI FREEDOM AND OPER-**  
4 **ATION ENDURING FREEDOM.**

5 (a) COMMISSION ON WARTIME CONTRACTING.—

6 (1) ESTABLISHMENT.—There is hereby estab-  
7 lished a commission to be known as the “Commis-  
8 sion on Wartime Contracting” (in this subsection re-  
9 ferred to as the “Commission”).

10 (2) MEMBERSHIP MATTERS.—

11 (A) MEMBERSHIP.—The Commission shall  
12 be composed of 8 members, as follows:

13 (i) 2 members shall be appointed by  
14 the Majority Leader of the Senate, in con-  
15 sultation with the Chairmen of the Com-  
16 mittee on Armed Services and the Com-  
17 mittee on Homeland Security and Govern-  
18 mental Affairs of the Senate.

19 (ii) 2 members shall be appointed by  
20 the Speaker of the House of Representa-  
21 tives, in consultation with the Chairmen of  
22 the Committee on Armed Services and the  
23 Committee on Oversight and Government  
24 Reform of the House of Representatives.

25 (iii) 1 member shall be appointed by  
26 the Minority Leader of the Senate, in con-

1 sultation with the Ranking Minority Mem-  
2 bers of the Committee on Armed Services  
3 and the Committee on Homeland Security  
4 and Governmental Affairs of the Senate.

5 (iv) 1 member shall be appointed by  
6 the Minority Leader of the House of Rep-  
7 resentatives, in consultation with the  
8 Ranking Minority Member of the Com-  
9 mittee on Armed Services and the Com-  
10 mittee on Oversight and Government Re-  
11 form of the House of Representatives.

12 (v) 1 member shall be appointed by  
13 the Secretary of Defense.

14 (vi) 1 member shall be appointed by  
15 the Secretary of State.

16 (B) DEADLINE FOR APPOINTMENTS.—All  
17 appointments to the Commission shall be made  
18 not later than 90 days after the date of the en-  
19 actment of this Act.

20 (C) CHAIRMAN AND VICE CHAIRMAN.—

21 (i) CHAIRMAN.—The chairman of the  
22 Commission shall be a member of the  
23 Commission selected by the members ap-  
24 pointed under clauses (i) and (ii) of sub-  
25 paragraph (A), but only if approved by the

1 vote of a majority of the members of the  
2 Commission.

3 (ii) VICE CHAIRMAN.—The vice chair-  
4 man of the Commission shall be a member  
5 of the Commission selected by the mem-  
6 bers appointed under clauses (iii) and (iv)  
7 of subparagraph (A), but only if approved  
8 by the vote of a majority of the members  
9 of the Commission.

10 (3) DUTIES.—

11 (A) GENERAL DUTIES.—The Commission  
12 shall study and investigate the following mat-  
13 ters:

14 (i) Federal agency contracting for the  
15 reconstruction of Iraq and Afghanistan.

16 (ii) Federal agency contracting for the  
17 logistical support of coalition forces in Op-  
18 eration Iraqi Freedom and Operation En-  
19 during Freedom.

20 (iii) Federal agency contracting for  
21 the performance of security and intel-  
22 ligence functions in Operation Iraqi Free-  
23 dom and Operation Enduring Freedom.

24 (B) SCOPE OF CONTRACTING COVERED.—  
25 The Federal agency contracting covered by this

1 paragraph includes contracts entered into both  
2 in the United States and abroad for the per-  
3 formance of activities described in subpara-  
4 graph (A), whether performed in the United  
5 States or abroad.

6 (C) PARTICULAR DUTIES.—In carrying out  
7 the study under this paragraph, the Commis-  
8 sion shall assess—

9 (i) the extent and impact of the reli-  
10 ance of the Federal Government on con-  
11 tractors to perform functions (including se-  
12 curity, intelligence, and management func-  
13 tions) in Operation Iraqi Freedom and Op-  
14 eration Enduring Freedom;

15 (ii) the performance of the contracts  
16 under review, and the mechanisms used to  
17 manage the performance of the contracts  
18 under review;

19 (iii) the extent of waste, fraud, abuse,  
20 or mismanagement under such contracts;

21 (iv) the extent to which those respon-  
22 sible for such waste, fraud, abuse, or mis-  
23 management have been held financially or  
24 legally accountable; and

1 (v) the appropriateness of the organi-  
2 zational structure, policies, and practices  
3 of the Department of Defense and the De-  
4 partment of State for handling contingency  
5 contract management and support.

6 (4) REPORTS.—

7 (A) INTERIM REPORT.—Not later than one  
8 year after the date of the appointment of all of  
9 the members of the Commission under para-  
10 graph (2), the Commission shall submit to Con-  
11 gress an interim report on the study carried out  
12 under paragraph (3), including the results and  
13 findings of the study as of that date.

14 (B) OTHER REPORTS.—The Commission  
15 may from time to time submit to Congress such  
16 other reports on the study carried out under  
17 paragraph (3) as the Commission considers ap-  
18 propriate.

19 (C) FINAL REPORT.—Not later than two  
20 years after the date of the appointment of all  
21 of the members of the Commission under para-  
22 graph (2), the Commission shall submit to Con-  
23 gress a report on the study carried out under  
24 paragraph (3). The report shall—

1 (i) include the findings of the Com-  
2 mission;

3 (ii) identify lessons learned on the  
4 contracting covered by the study; and

5 (iii) include specific recommendations  
6 for improvements to be made in—

7 (I) the process for developing  
8 contract requirements for wartime  
9 contracts and contracts for contin-  
10 gency operations;

11 (II) the process for awarding  
12 contracts and task orders for wartime  
13 contracts and contracts for contin-  
14 gency operations;

15 (III) the process for managing  
16 and providing oversight for the per-  
17 formance of wartime contracts and  
18 contracts for contingency operations;

19 (IV) the process for holding con-  
20 tractors and their employees account-  
21 able for waste, fraud, abuse, or mis-  
22 management under wartime contracts  
23 and contracts for contingency oper-  
24 ations;

1 (V) the process for determining  
2 which functions are inherently govern-  
3 mental and which functions are ap-  
4 propriate for performance by contrac-  
5 tors in an area of combat operations  
6 (including an area of a contingency  
7 operation), including a determination  
8 whether the use of civilian contractors  
9 to provide security in an area of com-  
10 bat operations is a function that is in-  
11 herently governmental;

12 (VI) the organizational structure,  
13 policies and practices of the Depart-  
14 ment of Defense and the Department  
15 of State handling contract manage-  
16 ment and support for wartime con-  
17 tracts and contracts for contingency  
18 operations; and

19 (VII) the process by which roles  
20 and responsibilities with respect to  
21 wartime contracts and contracts for  
22 contingency operations are distributed  
23 among the various departments and  
24 agencies of the Federal Government,  
25 and interagency coordination and



1 communication mechanisms associated  
2 with wartime contracts and contracts  
3 for contingency operations.

4 (5) OTHER POWERS AND AUTHORITIES.—

5 (A) HEARINGS AND EVIDENCE.—The  
6 Commission or, on the authority of the Com-  
7 mission, any subcommittee or member thereof,  
8 may, for the purpose of carrying out this sub-  
9 section—

10 (i) hold such hearings and sit and act  
11 at such times and places, take such testi-  
12 mony, receive such evidence, administer  
13 such oaths; and

14 (ii) subject to subparagraph (B)(i),  
15 require, by subpoena or otherwise, require  
16 the attendance and testimony of such wit-  
17 nesses and the production of such books,  
18 records, correspondence, memoranda, pa-  
19 pers, and documents,

20 as the Commission or such designated sub-  
21 committee or designated member may deter-  
22 mine advisable.

23 (B) SUBPOENAS.—

24 (i) ISSUANCE.—

1 (I) IN GENERAL.—A subpoena  
2 may be issued under subparagraph  
3 (A) only—

4 (aa) by the agreement of the  
5 chairman and the vice chairman;  
6 or

7 (bb) by the affirmative vote  
8 of 5 members of the Commission.

9 (II) SIGNATURE.—Subject to  
10 subclause (I), subpoenas issued under  
11 this subparagraph may be issued  
12 under the signature of the chairman  
13 or any member designated by a ma-  
14 jority of the Commission, and may be  
15 served by any person designated by  
16 the chairman or by a member des-  
17 ignated by a majority of the Commis-  
18 sion.

19 (ii) ENFORCEMENT.—

20 (I) IN GENERAL.—In the case of  
21 contumacy or failure to obey a sub-  
22 poena issued under clause (i), the  
23 United States district court for the ju-  
24 dicial district in which the subpoenaed  
25 person resides, is served, or may be

1 found, or where the subpoena is re-  
2 turnable, may issue an order requiring  
3 such person to appear at any des-  
4 ignated place to testify or to produce  
5 documentary or other evidence. Any  
6 failure to obey the order of the court  
7 may be punished by the court as a  
8 contempt of that court.

9 (II) ADDITIONAL ENFORCE-  
10 MENT.—In the case of any failure of  
11 any witness to comply with any sub-  
12 poena or to testify when summoned  
13 under authority of subclause (I) or  
14 this subclause, the Commission may,  
15 by majority vote, certify a statement  
16 of fact constituting such failure to the  
17 appropriate United States attorney,  
18 who may bring the matter before the  
19 grand jury for its action, under the  
20 same statutory authority and proce-  
21 dures as if the United States attorney  
22 had received a certification under sec-  
23 tions 102 through 104 of the Revised  
24 Statutes of the United States (2  
25 U.S.C. 192 through 194).

1           (C) ACCESS TO INFORMATION.—The Com-  
2 mission may secure directly from the Depart-  
3 ment of Defense and any other department or  
4 agency of the Federal Government any informa-  
5 tion or assistance that the Commission con-  
6 siderers necessary to enable the Commission to  
7 carry out the requirements of this subsection.  
8 Upon request of the Commission, the head of  
9 such department or agency shall furnish such  
10 information expeditiously to the Commission.  
11 Whenever information or assistance requested  
12 by the Commission is unreasonably refused or  
13 not provided, the Commission shall report the  
14 circumstances to Congress without delay.

15           (D) PERSONNEL.—The Commission shall  
16 have the authorities provided in section 3161 of  
17 title 5, United States Code, and shall be subject  
18 to the conditions set forth in such section, ex-  
19 cept to the extent that such conditions would be  
20 inconsistent with the requirements of this sub-  
21 section.

22           (E) DETAILEES.—Any employee of the  
23 Federal Government employee may be detailed  
24 to the Commission without reimbursement from  
25 the Commission, and such detailee shall retain

1 the rights, status, and privileges of his or her  
2 regular employment without interruption.

3 (F) SECURITY CLEARANCES.—The appro-  
4 priate departments or agencies of the Federal  
5 Government shall cooperate with the Commis-  
6 sion in expeditiously providing to the Commis-  
7 sion members and staff appropriate security  
8 clearances to the extent possible pursuant to ex-  
9 isting procedures and requirements, except that  
10 no person shall be provided with access to clas-  
11 sified information under this section without  
12 the appropriate security clearances.

13 (G) VIOLATIONS OF LAW.—

14 (i) REFERRAL TO ATTORNEY GEN-  
15 ERAL.—The Commission may refer to the  
16 Attorney General any violation or potential  
17 violation of law identified by the Commis-  
18 sion in carrying out its duties under this  
19 subsection.

20 (ii) REPORTS ON RESULTS OF REFER-  
21 RAL.—The Attorney General shall submit  
22 to Congress a report on each prosecution  
23 and conviction that results from a referral  
24 made under this subparagraph.

1           (6) TERMINATION.—The Commission shall ter-  
2       minate on the date that is 60 days after the date of  
3       the submittal of its final report under paragraph  
4       (4)(C).

5           (7) CONTINGENCY OPERATION DEFINED.—In  
6       this subsection, the term “contingency operation”  
7       has the meaning given that term in section 101 of  
8       title 10, United States Code.

9       (b) INVESTIGATION OF WASTE, FRAUD, ABUSE, AND  
10   MISMANAGEMENT.—

11           (1) IN GENERAL.—The Special Inspector Gen-  
12       eral for Iraq Reconstruction shall, in collaboration  
13       with the Inspector General of the Department of De-  
14       fense, the Inspector General of the Department of  
15       State, and the Inspector General of the United  
16       States Agency for International Development and in  
17       consultation with the Commission on Wartime Con-  
18       tracting established by subsection (a), conduct a se-  
19       ries of audits to identify potential waste, fraud,  
20       abuse, or mismanagement in the performance of—

21           (A) Department of Defense contracts and  
22       subcontracts for the logistical support of coali-  
23       tion forces in Operation Iraqi Freedom and Op-  
24       eration Enduring Freedom; and

1 (B) Federal agency contracts and sub-  
2 contracts for the performance of security, intel-  
3 ligence, and reconstruction functions in Oper-  
4 ation Iraqi Freedom and Operation Enduring  
5 Freedom.

6 (2) SCOPE OF AUDITS OF CONTRACTS.—Each  
7 audit conducted pursuant to paragraph (1)(A) shall  
8 focus on a specific contract, task order, or site of  
9 performance under a contract or task order and  
10 shall examine, at a minimum, one or more of the fol-  
11 lowing issues:

12 (A) The manner in which requirements  
13 were developed.

14 (B) The procedures under which the con-  
15 tract or task order was awarded.

16 (C) The terms and conditions of the con-  
17 tract or task order.

18 (D) The contractor's staffing and method  
19 of performance, including cost controls.

20 (E) The efficacy of Department of Defense  
21 management and oversight, Department of  
22 State management and oversight, and United  
23 States Agency for International Development  
24 management and oversight, including the ade-

1           quacy of staffing and training of officials re-  
2           sponsible for such management and oversight.

3           (F) The flow of information from the con-  
4           tractor to officials responsible for contract man-  
5           agement and oversight.

6           (3) SCOPE OF AUDITS OF OTHER CON-  
7           TRACTS.—Each audit conducted pursuant to para-  
8           graph (1)(B) shall focus on a specific contract, task  
9           order, or site of performance under a contract or  
10          task order and shall examine, at a minimum, one or  
11          more of the following issues:

12           (A) The manner in which the requirements  
13           were developed and the contract or task order  
14           was awarded.

15           (B) The manner in which the Federal  
16           agency exercised control over the contractor's  
17           performance.

18           (C) The extent to which operational field  
19           commanders are able to coordinate or direct the  
20           contractor's performance in an area of combat  
21           operations.

22           (D) The extent to which the functions per-  
23           formed were appropriate for performance by a  
24           contractor.



1           (E) The degree to which contractor em-  
2           ployees were properly screened, selected,  
3           trained, and equipped for the functions to be  
4           performed.

5           (F) The nature and extent of any incidents  
6           of misconduct or unlawful activity by contractor  
7           employees.

8           (G) The extent to which any incidents of  
9           misconduct or unlawful activity were reported,  
10          documented, investigated, and (where appro-  
11          priate) prosecuted.

12          (4) CONTINUATION OF SPECIAL INSPECTOR  
13          GENERAL.—

14               (A) IN GENERAL.—Notwithstanding sec-  
15               tion 3001(o) of the Emergency Supplemental  
16               Appropriations Act for Defense and for the Re-  
17               construction of Iraq and Afghanistan, 2004  
18               (Public Law 108–106; 5 U.S.C. App. 8G note),  
19               the Office of the Special Inspector General for  
20               Iraq Reconstruction shall not terminate until  
21               the date that is 60 days after the date of the  
22               submittal under paragraph (4)(C) of subsection  
23               (a) of the final report of the Commission on  
24               Wartime Contracting established by subsection  
25               (a).

1           (B) REAFFIRMATION OF CERTAIN DUTIES  
2           AND RESPONSIBILITIES.—Congress reaffirms  
3           that the Special Inspector General for Iraq Re-  
4           construction retains the duties and responsibil-  
5           ities in sections 4 of the Inspector General Act  
6           of 1978 (5 U.S.C. App. 4; relating to reports  
7           of criminal violations to the Attorney General)  
8           and section 5 of the Inspector General Act of  
9           1978 (5 U.S.C. App. 5; relating to reports to  
10          Congress) as expressly provided in subsections  
11          (f)(3) and (i)(3), respectively, of section 3001  
12          of the Emergency Supplemental Appropriations  
13          Act for Defense and for the Reconstruction of  
14          Iraq and Afghanistan, 2004.

15          (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
16          authorized to be appropriated such sums as may be re-  
17          quired to carry out the provisions of this section.